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California State Senate

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JIM COSTA

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TRANSPORTATION
CALIFORNIA WORLD
TRADE COMMISSION

October 18, 2002

Federal Communications Commission
C/o Marlene H. Dortch, Commission Secretary
445 12th Street SW
CY-B402
Washington DC 20554

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Re: FCC Docket No. 02-306

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Commissioners:

I understand that the Federal Communications Commission (FCC) is currently reviewing Pacific Bell's application to enter the long distance market in California. I further understand that some parties filing comments have suggested that Section 709.2 of the California Public Utilities Code and the federal statutory requirements for long distance relief are mutually exclusive. In other words, they have suggested that Section 709.2 should act as a bar to Pacific Bell being granted long distance authority by the FCC. As I was the author of Section 709.2 while a member of the California State Assembly, I am writing to clarify that this legislation was in no way intended to stand as a barrier to FCC approval of Pacific Bell's long distance application. As I discuss below, **if** the FCC concludes that Pacific Bell meets the federal statutory requirements for relief, then the company meets the requirements of Section 709.2 and I would strongly urge the FCC to approve Pacific Bell's application.

By way of background, Assembly Bill 3720 was the vehicle I authored that enacted Section 709.2 on January 1, 1995. At that time, the local market was not open to competition and Pacific Bell was prohibited from providing long distance because of a federal district court order known as the Modification of Final Judgment or MFJ. The purpose in drafting AB 3720 was to provide a framework by which the telecommunication marketplace in California would become more competitive. Simply stated, if Pacific Bell opened the local market to competition and there was no evidence of anticompetitive behavior or cross-subsidization that would hurt the other long distance carriers, then the California Public Utilities Commission could support Pacific Bell's entry into the long distance market through an MFJ waiver obtained from the federal court.

Everything changed, however, when the Telecommunications **Act** of 1996 (the **Act**) was passed by Congress and signed into law by President Clinton. The Act superseded the MFJ, provided a comprehensive federal statutory and regulatory scheme for opening the local telephone marketplace to competition, and established a detailed set of requirements that Pacific Bell would have to meet in order to provide long distance service. The federal requirements closely mirror AB 3720. In each case, the applicant is required to demonstrate open access to its

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network, compliance with restrictions against improper cross-subsidization or anti-competitive behavior, and that entry into the long-distance market would be in the public interest. In light of the detailed and comprehensive requirements that have been established at the federal level, clearly, any applicant that meets the federal test more than satisfies AB 3720.

Put another way, **it** would be unequivocally contrary to the intent of AB 3720 to somehow use Section 709.2 as a barrier to FCC approval of a Pacific Bell 271 application that complies with the requirements of the federal Act.

I appreciate your consideration of my views on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Costa", written over the word "Sincerely,".

JIM COSTA
Member of the Senate
16th District

JC:tr